

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re:

Bair Hugger Forced Air Warming
Products Liability Litigation

This Document Relates To:

All Actions

MDL No.
15-2666 (JNE/FLN)

VIDEOTAPED DEPOSITION

OF

SCOTT D. AUGUSTINE, M.D.

Minneapolis, Minnesota

Friday, March 31, 2017

Reported by:

Amy L. Larson, RPR

Job No. 121237

AUGUSTINE

APPEARANCES:

ON BEHALF OF 3M:

COREY GORDON, ESQUIRE

PETER GOSS, ESQUIRE

MICAH HINES, ESQUIRE

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FOR AUGUSTINE BIOMEDICAL + DESIGN/DEPONENT:

AUGUSTINE BIOMEDICAL + DESIGN

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APPEARANCES: (Cont'd.)

FOR THE PLAINTIFF:

BEN GORDON, ESQUIRE

LEVIN, PAPANTONIO, THOMAS, MITCHELL

RAFFERTY & PROCTOR

316 S. Baylen Street

Pensacola, FL 32502

ALSO PRESENT: Janell Pepper, 3M

Stefan Sigurdson, Videographer

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2 personal risk and liability."

3 "You have two critical problems to
4 deal with, but the good news is that if you
5 don't panic, they are both solvable. I'm
6 offering to sell you the solution to the
7 contamination problem, and there are several
8 possible solutions to the laminar flow
9 disruption problem."

10 "With or without our help in solving
11 these problems, you are on a really short
12 timetable. I guarantee you that we will be
13 taking the confirm" -- "contamination issue
14 to the regulators before June and that action
15 will instantly limit your options. Maybe we
16 should get together and talk about these
17 matters, Scott."

18 Did I read that correctly?

19 A. Yes, you did.

20 Q. Okay.

21 (Whereupon, Exhibit 70 was
22 marked for identification.)

23 BY MR. COREY GORDON:

24 Q. I'm going to show you Exhibit 70. It's a
25 letter dated June 21st, 2010, from you to

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2 Deborah Rectenwald, President and GM,
3 Infection Prevention Division, 3M Health Care
4 Business, correct?

5 A. That's correct.

6 Q. Okay. And you're discussing the recent
7 acquisition by 3M of the Arizant Bair Hugger
8 business, right?

9 A. That's correct.

10 Q. Okay. And you say you apologize in advance
11 for the length of this letter. "We want to
12 provide the sufficient detail for you," 3M,
13 "to take immediate action," right?

14 A. Yes.

15 Q. Okay. On page 2 you -- under Arizant's
16 response you say, "Before the AJIC article
17 was published, Arizant attempted to pressure
18 lead author David Leaper threatening that
19 conducting such research would put him in a
20 legal" -- "in legal and professional
21 jeopardy. In a representation to a German
22 court, Arizant flatly denied the decrease in
23 filtration efficiency. Please see filtration
24 efficiency report, tab 2. Most consistently,
25 Arizant has relied on marketing proclaiming

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2 that not a single report of a surgical site
3 infection has been linked to Bair Hugger,
4 Arizant website, Truth about FAW." Did I
5 read that right?

6 A. Yes.

7 Q. And you go on to say, "The argument is
8 clever, because Arizant knows that it is
9 nearly impossible to trace a particular germ
10 to its source." Did I read that correctly?

11 A. Yes.

12 Q. And you thought that was an accurate
13 statement when you wrote it back in 2010,
14 right?

15 A. Yes.

16 Q. And it's still true today, right?

17 A. In this case it is.

18 Q. Okay. And on page 5, down at the bottom,
19 towards the bottom, you say, "Until now we
20 have never made a statement that links the
21 word infection to Bair Hugger. We have
22 limited our" -- "limited our discussion to
23 contamination, because that was all the
24 research supported. That limitation,
25 however, will not exist much longer. The

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2 previously-mentioned study that has been
3 accepted for publication in a major journal,
4 Forced-Air Warming and Ultraclean Ventilation
5 Do Not Mix: An Investigation of Theater
6 Ventilation, Patient Warming, Joint
7 Replacement Infection in Orthopedics
8 attachment 3, includes the following sentence
9 in the abstract, Bair Hugger patient
10 ventilation disruption was associated with a
11 significant increase in deep joint infections
12 demonstrated by an elevated infection odds
13 ratio, 3.8, P equals 0.028, forced air versus
14 conductive patient" -- "conductive fabric
15 patient groups, N equals 1437 cases, 2.5 year
16 period."

17 Did I read that correctly?

18 A. Yes.

19 Q. You go on to say to 3M, "Research results
20 from another hospital, which have also been
21 submitted for publication, show that the deep
22 joint infection rates dropped by 81 percent
23 after switching from Bair Hugger to HotDog
24 warming." Did I read that correctly?

25 A. Yes.